

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

Gilberto Brown

v.

Civil No. 07-cv-174-SM

United States of America

O R D E R

Petitioner seeks relief from his conviction and sentence under 28 U.S.C. § 2255, claiming, among other things, that his defense counsel provided constitutionally deficient legal representation.

Petitioner was convicted, after a jury trial, of two counts of distribution of cocaine base ("crack") in violation of 21 U.S.C. § 841(a)(1). He was sentenced to 70 months of imprisonment. The conviction and sentence were affirmed on appeal. United States v. Brown, 450 F.3d 76 (1st Cir. 2006). This petition was timely filed within one year of the mandate.

Essentially three claims are made in the petition. Petitioner says defense counsel did not adequately investigate his claims of actual innocence, or a mistaken identity defense, and, counsel "refused to [call him] to the witness stand and allow [him] to testify," despite petitioner's having insisted upon exercising his right to testify. The last claim, at least,

requires a hearing. See Owens v. United States, 483 F.3d 48, 60 (1st Cir. 2007).

The clerk will schedule a hearing on the petition.

SO ORDERED.



Steven J. McAuliffe
Chief Judge

February 8, 2008

cc: Gilberto Brown, pro se
U.S. Attorney's Office
Bjorn R. Lange, Esq.